



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director  
(804) 698-4000

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
KONDAKOR EXCAVATION, INCORPORATED  
UNPERMITTED IMPACTS**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Kondakor Excavation, Incorporated, for the purpose of resolving certain violations of State Water Control Law and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizen' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.

5. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
6. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
7. "Kondakor" means Kondakor Excavation, Incorporated, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Kondakor is a "person" within the meaning of Va. Code § 62.1-44.3.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
10. "Permit" means VWP general permit number WP4-07-1773 issued by DEQ to Kondakor on December 10, 2007 under Va. Code §62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code §62.1-44.5 or otherwise serves as the Commonwealth's certification under §401 of the Clean Water Act (33 United States Code (USC) §1344.
11. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
12. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.
13. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
14. "Property" or "Site" means the tract of land located at 1644 Mahixon Road, King William County, Virginia with Tax Map ID 26-7.

15. "Regulations" means the VWP Permit Program Regulations, 9 VAC 25-210 *et seq.*
16. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
19. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
20. "USACE" means the United States Army Corps of Engineers.
21. "USM" means unified stream methodology.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VWPP" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
25. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. On August 15, 2017, the Department inspected the Property and observed in an unnamed tributary of Mehixen Creek a total of 750 linear feet of impacted stream bed. The impacts occurred from clearing and grubbing on site combined with the lack of appropriately installed and maintained erosion and sediment controls or other best management practices.
2. A review of DEQ files and databases revealed the Property does not have a Permit from the Department.



3. On September 6, 2017, the Department issued a Notice of Violation (NOV) to Kondakor citing them for violating Va. Code § 62.1-44.15:20(A) and 9 VAC 25-210-50(A).
4. Va. Code § 62.1-44.15:20(A) states “Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: 1. Excavate in a wetland; 2. On or after October 1, 2001, conduct the following in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or function; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.”
5. 9 VAC 25-210-50(A) states that “Except in compliance with a VWP permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, withdraw surface water, otherwise alter the physical, chemical or biological properties of surface waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.”
6. On October 17, 2017 representatives from Kondakor met with DEQ staff to discuss NOV No. 17-000380 and the issuance of this Order. Kondakor was informed that they will be required to develop and implement a plan to remove accumulated sediment from the impacted stream beds.
7. On September 23, 2019, DEQ staff inspected the Property and observed impacts remaining in some areas of the unnamed tributary of Mehixen Creek. DEQ staff observed significant downcutting and gully erosion on the slope at Discharge Point 3 due to a ditch draining toward this area.
8. Based on the results of the August 15, 2017 and September 23, 2019 inspections and the October 17, 2017 meeting the Board concludes that Kondakor has violated Va. Code § 62.1-44.15:20(A) and 9 VAC 25-210-50(A) as described above.
9. In order for Kondakor to return to compliance, DEQ and Kondakor have agreed to the schedule of compliance which is incorporated in Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Kondakor, and Kondakor agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge in the amount of \$8,000 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

| Due Date           | Amount             |
|--------------------|--------------------|
| December 15, 2019  | \$2,000 or balance |
| March 15, 2020     | \$2,000 or balance |
| June 15, 2020      | \$2,000 or balance |
| September 15, 2020 | \$2,000            |

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Kondakor. Within 15 days of receipt of such letter, Kondakor shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.
4. All payments shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

5. Kondakor shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Kondakor shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Kondakor for good cause shown by Kondakor, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law

regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Kondakor admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Kondakor consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Kondakor declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Kondakor to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Kondakor shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Kondakor shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Kondakor shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;  
and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.



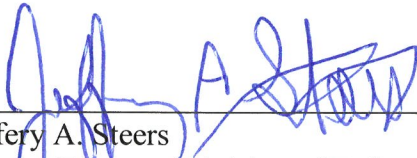
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Kondakor.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Kondakor has completed all of the requirements of the Order;
  - b. Kondakor petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Kondakor.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Kondakor from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Kondakor and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Kondakor certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Kondakor to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official or officer of Kondakor.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Kondakor voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20<sup>th</sup> day of December, 2019.



---

Jeffery A. Steers  
Interim Director, Division of Enforcement  
Department of Environmental Quality

-----Remainder of page left blank on purpose-----



Kondakor Excavation, Incorporated voluntarily agrees to the issuance of this Order.

Date: 8/15/19 By: Eleck Kondakor, OFFICER  
(Person) (Title)  
Kondakor Excavation, Incorporated

Commonwealth of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 15 day of

October, 2019, by Eleck Kondakor who is

officer of Kondakor Excavation, Incorporated, on behalf of the  
corporation.

Kathy Steers

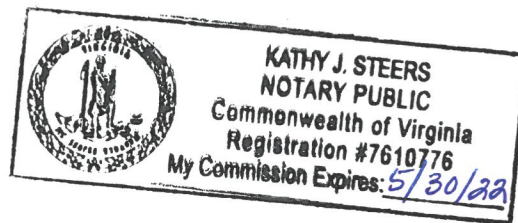
Notary Public

7610776

Registration No.

My commission expires: May 30, 2022

Notary seal:



## Appendix A

1. Within 45 days from the date of this Order, or such later date approved by DEQ at Kondakor's request for good cause shown, Kondakor shall remove by hand sediment accumulations greater than 2 inches in depth from stream bed of the unnamed tributary of Mehixen Creek located on the Property. No heavy equipment shall be used in the stream bed. Heavy equipment may be used for transportation of sediment outside of surface waters only. In particular, Kondakor shall focus its sediment removal efforts in the following areas of the stream bed of the unnamed tributary to Mehixen Creek located on the Property noted in the VWP Inspection Report summarizing the inspection conducted on September 23, 2019 (the "Inspection Report"):
  - a. Along the 20 linear feet of the tributary upstream of a log jam between Discharge Points 1 and 2, varies between 2 and 7 inches deep, as shown in Photo 4 in the Inspection Report;
  - b. The area that is immediately upstream of the timber crossing, where the sediment is estimated to be approximately 11 inches deep, as show in Photo 7 in the Inspection Report; and
  - c. The area starting at Discharge Point 3 and extending approximately 50 linear feet downstream, where there appears to be approximately 14 inches of accumulated sediment on the instream bars, as shown in Photo 11 to the Inspection Report.
2. Within seven days of completion of sediment removal, Kondakor shall provide DEQ with photo documentation that work was completed. At a minimum photos provided shall include a view of the top of the sediment removal, looking downstream, and a view of the bottom extents of the sediment removal, looking upstream. The photos shall be provided for each area of sediment removal as described in Paragraph (1)(a)-(c) above.
3. Kondakor may dispose of the removed sediment onsite, provided that such disposal is conducted in compliance with applicable erosion and sediment control regulations. If sediment is disposed onsite, within seven days of disposal, Kondakor shall submit to DEQ a detailed description of the location of the disposal area, photo documentation of the disposal area, and a description of the actions taken to stabilize and control the sediment.
4. Kondakor may perform the sediment removal itself, or it may retain a third party to conduct the required sediment removal.
5. Within 30 days from the date of this Order, Kondakor shall install additional stormwater control measures to control the stormwater flows in the drainage area of Discharge Point 3 to prevent undercutting and gully erosion. Within seven days of installation of control measures, Kondakor shall submit to DEQ photo documentation of the control measures. Submit photo documentation within 7 days. By March 15, 2020; June 15, 2020; September 15, 2020; and December 15, 2020 Kondakor shall submit photographs taken

from approximately the same location and orientation as photo locations 11-14 as defined in the Inspection Report. Should photo documentation submitted to DEQ show persistent undercutting and gully erosion, Kondakor shall take additional measures to prevent undercutting and gully erosion within 30 days of notification from DEQ of the issue.

6. Kondakor shall submit all requirements of this order to:

Carla Pool  
Department of Environmental Quality  
P.O. Box 1105  
Richmond, Virginia 23218  
Carla.Pool@deq.virginia.gov

